



COMMONWEALTH OF KENTUCKY
ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY

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Judicial Ethics Opinion
JE - 67

Formal Opinion

Question: May a Kentucky Judge serve as a member of an advisory board of a local financial institution?

Answer: No. Canon 5B(2).

The Judicial Ethics Committee has received a letter from a judge requesting an opinion as to whether, ethically, he may serve as a member of an Advisory Board of a local financial institution. In his listing of the pertinent facts, the judge tells us that:

- (1) the Advisory Board will have no personal liability and will have no authority to bind the institution on any matter;
- (2) members of the Advisory Board may receive token compensation for serving on the Board;
- (3) At the present time, the financial institution does not have any outstanding loans; however, it is anticipated in the future that loans will be made some of which may result in foreclosure actions by reason of default. Based upon past experience, it is reasonable to anticipate between two and six such filings per year.

I. THE KENTUCKY JUDICIAL CODE OF ETHICS
DOES NOT ABSOLUTELY PROHIBIT JUDGES
FROM SERVING ON BOARDS OF BANKS.

Kentucky has not adopted the most restrictive form of Canon 5C(2). The most restrictive form of Canon 5C(2) would absolutely prohibit judges from being an "officer, director, manager, advisor or employee of a business." ABA Code of Judicial Conduct, Canon 5C(2), D.R. Fretz, R.A. Peeples & J.C. Wicker, Ethics for Judges (1982). Instead, Kentucky has taken a much more lenient stance. Paragraphs (1) and (2) of our Canon 5C read:

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

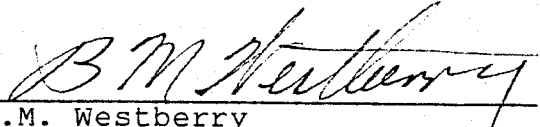
(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activities including the operation of a business.

In fact, Kentucky has not chosen to strictly prohibit judges from being involved in certain businesses such as banks, a decision that has been made by some jurisdictions. Babineaux v. Judiciary Commission, 341 So.2d 396 (1976).

Nevertheless, members of the Committee are concerned that service on a local bank's board would run afoul of our Canon 5C because of the frequency with which the organization would be involved in litigation, thus requiring a judge to disqualify himself. Such a practice interferes with a judge's duties and burdens the judiciary. However, an assessment of the frequency of litigation is not required in this particular situation because in this case a judge's service on this Advisory Board is prohibited by another provision of the Code.

II. A JUDGE MAY NOT ALLOW THE
PRESTIGE OF HIS OFFICE TO BE USED
FOR THE SOLICITATION OF FUNDS.

Judges are not permitted by the Code of Judicial Conduct to give legal advice. Canon 5F. For this reason, in reviewing this question, the Committee was unable to determine any purpose the judge could serve on an Advisory Board other than lending his name to enhance the prestige of the institution to enable it to draw more business. A judge may not allow the prestige of his office to be used for that purpose. Canon 5B(2) and Canon 5C(1). Therefore a judge may not serve as a member of Advisory Board of a local financial institution.


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Judicial Ethics Committee